

COPYRIGHT VS ACCESSIBILITY: THE CHALLENGE OF EXPLOITATION

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I. Introduction

In his book, *An Introductory History of British Broadcasting*, Andrew Crisell muses that the reason for the instant success of broadcasting (or radio for that matter) was that:

“...broadcasting was the first genuinely live mass medium since ‘theatre’ because it was instantaneous: its messages were received by its audience at the very moment they were sent; they were not fixed messages in the form of printed texts and photographs or recordings of sounds or moving images. From 1922 radio transmitted live sound to a private, domestic audience, and from 1936 television provided the same kind of audience with live sound and live moving pictures.”¹

South Africa was no different and, in terms of radio broadcasts, did not lag far behind the rest of the world. The South African Broadcasting Corporation (SABC) was formally established as the country’s public broadcaster by an Act of Parliament in April 1936, with approximately 750,000 listeners. Provision for television was made in the draft Bill, but at the time television was considered impractical and too expensive.² Television did not become a reality in South Africa until 1976, which gave radio (and in particular, Springbok Radio as the first commercial broadcast service in South Africa) the perfect opportunity to develop and become the so-called ‘theatre of the mind’ in every sense.

Springbok Radio was born when the SABC accepted that commercial funding was needed to cover the costs of, amongst others, equipment and salaries. It is interesting to note that the SABC Board had for many years resisted a commercial station, but by the mid-1940s it was clear that sooner or later commercial radio would have to be considered.³ Springbok Radio was introduced in 1950 as a bilingual (English and Afrikaans) commercial service with a commitment to promote local music and talent.⁴

Springbok Radio was immediately a resounding success. By 1952, Springbok Radio was the main source of advertising revenue, and the first national market research survey of radio stations done in 1952 showed that Springbok Radio had 632,000 adults listening to it on an average day. At the height of its popularity, it had an audience of over two million. For thirty-five years, Springbok Radio ruled the airwaves by catering for a wide spectrum of listeners, through dramas, children’s programming, sports, news, request programmes, serials, and competitions. It enabled radio personalities to become hugely popular, since this was the era of the radio star.⁵

And then came television ...

Springbok Radio closed down in 1985, almost ten years after the launch of television, without much of its content being preserved by the SABC and very little documentation surviving the closing of the station.

1 Crisell, Andrew, *An Introductory History of British Broadcasting*. (London: Routledge, 1997), 4.

2 “Radio Broadcasting in South Africa,” accessed 18 September 2012, http://myfundi.co.za/e/Radio_broadcasting_in_South_Africa.

3 SABC, “The SABC...informing a nation...inspiring the future,” SABC Corporate Heritage Profile, 2011.

4 “Radio Broadcasting in South Africa.”

5 “Radio Broadcasting in South Africa.”

The Springbok Radio Preservation Society (SRPS), formed by enthusiastic Springbok Radio collectors, centralised most of the material gathered over the years by various collectors. It also kept the memory of Springbok Radio alive via a website, www.springbokradio.com, and a web stream. The almost cult-like following of Springbok Radio resulted in a unique relationship between the Society and the SABC through which the Society approached the SABC to ensure that the collection would find its way back to the SABC. The collection and the exploitation of the content were handed back to the SABC in terms of an agreement between the SABC and the SRPS in 2012.

Exploitation of the material, fuelled by the belief of the SABC Radio Archives that any Old Time Radio (OTR) material is only as valuable as the ears it reaches and the memories it awakens, faces numerous challenges, of which copyright is the greatest—especially regarding commercials and signature tunes. The SABC Radio Archives has been struggling to find copyright information relating to the collection for many years. Today, SABC is still on this quest.

This paper will seek ways of enabling exploitation when little or no information exists regarding copyright. How do we make the past available for today with little or no information and resources?

2. Background

2.1. OTR

Old Time Radio or the *Golden Age of Radio* has become synonymous with the period of radio broadcasting before television replaced radio as the primary home entertainment medium. One can simply do an Internet search on OTR to see how it has expanded over the years. To understand the rise of this movement, it helps to understand nostalgia. Rob Sheffield, as quoted by Goodreads Inc., states that “the times you lived through, the people you shared those times with—nothing brings it all to life like an old mix tape. It does a better job of storing up memories than actual brain tissue can do. Every mix tape tells a story. Put them together, and they can add up to the story of a life.”⁶

The exploitation of the Springbok Radio collection is driven by this OTR phenomenon. Margaret Logan says the following about Springbok Radio: “Destined to become a legend in the memories of many listeners, Springbok Radio became a familiar presence in private homes, and also in public and work places such as cafes, supermarkets, factory production lines, hair-dressing salons, exhibitions, and show grounds. Springbok Radio would go to lengths to record programmes, and comedy programmes such as *Men from the Ministry* and *Father Dear Father* were recorded in front of audiences on luxury ocean liners at sea and in mining towns in South West Africa (now Namibia).”⁷

Logan feels that Springbok Radio’s success may have “something to do with the fact that despite an exclusively white English and Afrikaans-speaking management and staff, Springbok Radio became a household name for first-language English and Afrikaans speakers categorized as non-white, African language speakers and immigrants.”⁸ The announcer on duty played an enormous role in this success through wisecracks, telling jokes and entertaining anecdotes, and light-hearted chatter. And even the unavoidable advertisements and infectious jingles helped to make Springbok Radio memorable. Many of those advertisements and jingles lived on in listeners’ memories, to be recalled decades later.

And that is why it is important to bring listeners the memories of Springbok Radio: it is about the stories, the memories, and the reasons for the memories.

6 Rob Sheffield, quoted in Goodreads, <http://www.goodreads.com/quotes/tag/nostalgia>.

7 Margaret Elaine Logan, “The Whiteness of South-African English Radio Drama: A Postcolonial Study of the Rise, Decline and Demise of a Dramatic Sub-Genre,” (MA diss., University of South Africa, 2009).

8 Logan, “The Whiteness of South-African English Radio Drama.”

When asked on the Springbok Radio's Facebook page why people still needed to listen to Springbok Radio, the responses were interesting:

"Kind of like thumbing through old photo albums"
—Gikas Markantonatos

"Takes me back to my childhood before TV when my brother and I would lie in our bunk beds and listen to *Squad Cars*"
—Hari Conidaris

"Often the stories are much more exciting compared to watching TV! My imagination adds so much more to the story"
—Richard Briscoe⁹

Owens Lee Pomeroy, as quoted on the Mama's Empty Nest Blog, summed it up beautifully: "Nostalgia is like a grammar lesson—you find the present tense, but the past perfect!"¹⁰

2.2. The collection

The Springbok Radio collection currently holds 527 hours of catalogued material and 4,283 hours of un-catalogued programmes. The backlog or un-catalogued material contains LPs, cassettes and mostly ¼-inch tapes, while the permanent, or catalogued, collection is mostly preserved on CD-R. The master ¼-inch tapes are always kept as first generation copies. The programmes in the collection comprise dramas, serials, documentaries, music and variety programmes, programmes for children, as well as quiz programmes. Springbok Radio is best remembered for its stories, both English and Afrikaans, and the genres of these stories vary from detective stories like *Inspector Carr Investigates*, to comedy such as *The Men from the Ministry*, to science fiction, such as *SF 68*.

At first the station re-broadcast material from foreign authors, especially from the UK, Australia, and the US—for example *The Men from the Ministry*, *Address Unknown*, *Friends and Neighbours*, and *The Avengers*. According to Pumamouse, the originator of the OTR website www.pumamouse.com, which also carried the Springbok Radio story for many years, many of the Australian serials broadcast in South Africa were adapted from material originally broadcast in the US. These included the popular *Superman* (which was broadcast from 1950–1967), and other children's serials such as the *American Lone Ranger* and *Hopalong Cassidy*. Evening programmes, such as the original *The Creaking Door* series, broadcast from 1952, were also imported. Monday evening's play-hour, originally entitled *Lux Radio Theatre*, and *Wednesday's Radio Playhouse* were both greatly indebted to American and Australian plays during this period. According to Margaret Logan more than sixty per cent of all drama programmes on Springbok Radio were initially imported, mainly from Australia.¹¹

Soon the potential of Springbok Radio was recognised by producers, actors, and sponsors. The cultural boycott during the Apartheid years (which saw the majority of British and American writers banning the use of their work in South Africa), and the need to extend successful serials like *The Men from the Ministry*, contributed to more local content being produced. This, in turn, created opportunities for local authors, actors, producers, and sponsors to make their mark. Local production houses, such as Sonovision Studios and Olympia Recording Studios, among others, played a huge role in the creation of local content. From these studios popular

9 "Springbok Radio Revisited," Springbok Radio Revisited, accessed September 2012, <https://www.facebook.com/pages/Springbok-Radio-Revisited/158865447538194?ref=hl>.

10 "Mama's Empty Nest," Mama's Empty Nest, accessed September 2012, <http://mamasmemptynest.wordpress.com/2011/07/30/nostalgia-lesson-past-present-and-future>.

11 Logan, "The Whiteness of South-African English Radio Drama."

programmes such as *High Adventure* and *Squad Cars* saw the light and gave Springbok Radio a definite local flavour. Springbok Radio was restricted to texts that were out of copyright, and the situation at the time resulted in extra work that benefited local scriptwriters in particular, and actors, producers, and production houses in general.¹²

Owing to the commercial nature of Springbok Radio, external companies sponsored radio programmes, and sponsorship agreements determined the broadcasts and recording of programmes. This practice lasted until about 1976 and complicated the ownership of broadcast material considerably, as it added another stakeholder in the ownership and rights of specific programmes. In some cases, for example *Jet Jungle*, or the *Skip Show 21*, the title of the program was directly linked to and registered by a company, with the result that these programmes can still not be used without permission from the original sponsors.

The commercial nature of Springbok Radio and the re-use of ¼-inch tapes for recording other material seemingly resulted in very little of Springbok Radio surviving. The SABC Radio Archives was established only in 1964—almost thirty years after the establishment of the corporation—and focussed on the preservation of the public broadcast programmes. A call made to listeners during the 1990s, and more recently through social media, brought the SABC Radio Archive into contact with Springbok Radio collectors who had recorded the material and with producers who happened to have kept their productions. The SRPS did most of the groundwork to collect the material, but new finds are still made. Although an agreement is now in place with the SRPS, and Springbok Radio material has found its way back into the SABC Radio Archives, it remains a time-consuming and delicate process to build trust relationships with collectors to the extent they are willing to part with or share their collections.

The preservation of the material is a challenge in itself, since much of it, coming from private collectors, is in a very bad state: firstly because of poor recording quality, but also because of the degeneration of carriers. It is therefore critical for the material to be digitized and stored in an accessible manner, not only for future exploitation purposes, but also so as not to repeat the mistakes of the past regarding the safekeeping of this broadcast cultural gem.

3. The challenge of exploitation

The question may arise as to why it is important to exploit Springbok Radio. Firstly the current demand is great enough to justify the trouble, and secondly an ongoing interest in the collection may keep Springbok Radio and what it had to offer alive for generations to come.

In his article, *The Long Tail*, Chris Anderson's reasoning that material not part of the mainstream may at long last be accessible in the digital domain is of interest regarding the exploitation of the Springbok Radio collection. Technology provides the means to get the material out there without the limitations of mainstream media. Anderson is also of the opinion that exploitation in the digital era requires less of a one-size-fits-all product and enables niche market targeting more than ever before with less effort, less costs, and at less risk.¹³ The Centre for Popular Memory, situated in Cape Town, stated on an earlier website that "through the use of digital technology we now have the means to effectively fulfil our wishes of accessibility—this means that the fragile, but extremely important stories of the past which inform the present, can be available for use in schools, urban and rural centres, and across the globe through the worldwide web...This process also ensures that our audio recordings are digitally preserved for future generations."¹⁴

¹² Ibid.

¹³ Chris Anderson, "The Long Tail," *Wired Magazine*, October 2004, Issue 12.10.

¹⁴ "Digital Access," Centre for Popular Memory, accessed September 2012, <http://www.popularmemory.org.za>.

The Springbok Radio collection does find value in digital exploitation of material by means of a bi-weekly audio stream consisting of a package of the programmes that loops every six hours. But even in the digital era, exploitation of the Springbok Radio collection is not a simple matter. Challenges remain in the form of access (specifically referring to technology), funding and resources, and especially copyright.

Access to the Springbok Radio collection is of utmost importance. Recently, after the official handover of the archives from the SRPS to the SABC and media coverage of the event, requests for the material skyrocketed. Listeners want to remember. The continued interest in the Springbok Radio collection can and will benefit from digital technologies, but even if access can be expanded, copyright is by far the biggest challenge in exploiting the Springbok Radio collection.

3.1. Copyright

In South Africa the Copyright Act no. 98 of 1978 governs copyright. The Springbok Radio collection is specifically influenced by copyright in literary or musical works, sound recordings, and copyright in broadcasts, as well as matters pertaining to moral rights and assignment of licenses. The basis of South African copyright law stipulates that copyright belongs to the author or creator of a work up until fifty years after his or her death.

In principle, three types of ownership impact Springbok Radio and the exploitation of its content, namely:

- imported programmes, of which the copyright obviously lies with the original creators thereof,
- adaptations of literary works, but also of foreign serials, which brings the issue of format licensing to the fore, and
- locally commissioned programmes.

In the case of imported programs, contractual permission should be obtained from the companies or individuals who own the copyright of the programme/s. It is not always clear whether ownership resides with a company or an individual, since, in the case of much of the older material, contracts no longer exist, or never existed.

Regarding adapted works, chapter 1, paragraph 6 of the Copyright Act states that permission is needed for re-broadcast thereof. This entails not only permission from the original creator/s of the work, but also of the person/s who adapted the material for broadcast purposes. Chapter 12 of the Act stipulates that, in the case of literary adaptations, programmes may be archived but only rebroadcast with permission from the original creator of the work.

Adapted and format-licensed programmes agreements were usually verbally agreed, based on friendship amongst the authors, artists, and producers; very few formal agreements were concluded on the conditions and ownership of these programmes.

For commissioned programmes, ownership seems relatively simple. However, chapter 9 of the Copyright Act states that permission should be granted for recording of material and that royalties should be paid to relevant copyright owners and participants in case of re-broadcast thereof. Contracts stipulate the conditions of recordings and payment of royalties. Once again the non-existence of contracts complicates the matter.

Of particular interest to the exploitation of Springbok Radio is chapter 21 of the Act, which states that ownership of copyright in commissioned works lies with the one who commissioned it, and if a work was created during employment at a certain company then copyright belongs to the company. For Springbok Radio, quite a number of programmes were commissioned by the SABC; therefore, to the best of our knowledge, the copyright thereof belongs to the SABC. But that only deals with commissioned programmes, not

with format licensed programmes or adaptations. Another point of interest is assignment of copyright of licensing to another party by means of inheritance or any other means, which further adds to our challenge.

According to Sizwe Vilikazi of the SABC's legal department, "with Springbok Radio being an old radio station, one of the difficulties faced while exploiting and re-using some of the content is that there are no acquisition contracts, so it is not known how that content was acquired, whether it was licensed or commissioned content. The safest way in dealing with this type of content is first to consult all the available and traceable interested parties to ascertain what rights, if any, do they hold in this content."¹⁵ Denise Nicholson, a Copyright Services consultant at the University of the Witwatersrand, is also of the opinion that commissioned works generally belong to the person who commissioned the work.¹⁶

The biggest challenge is therefore with format licensing. If recordings were based on a programme of which copyright belongs to another party and no contract exists (since many of these agreements were verbal and based on friendship), it becomes very hard to decide if exploitation of locally produced recordings should consider the holder of the format license. The general feeling is that the locally produced recording should not pose a problem, since decisions can be based relatively safely on the knowledge that some form of agreement existed, and that parties involved usually had the love of radio as motivator. At face value this would not hinder further exploitation of the material at no cost, but there remains a risk that a license holder might dispute the exploitation of the material, which could pose serious problems.

Ethical issues regarding the collection versus the law are also important. An interesting fact is that most of the material in the collection that has been handed back to the SABC have been obtained illegally by the collectors by means of home recordings. Even though collectors can be challenged, a blind eye is usually turned, and collectors drawn into partnership rather than hostility.

3.2. Exploitation

What exactly then is the challenge regarding Springbok Radio and copyright? It is the lack of documentation.

Very few contracts and/or agreements survived the era, if they ever existed. The SABC has access to a couple of contracts with artists who performed in productions, but other than that no formal sources exist to search for copyright details of programmes. Taking the law into account, one can easily step on toes when exploiting material, which is what the SABC would prefer to avoid. For the most part the SABC Radio Archive is dependent on people's memories regarding agreements pertaining to production, but without proof it is very difficult to challenge a claim made regarding copyright.

It is also not known what the contracts stipulated regarding the re-broadcast of material, exploitation, or the level of involvement of production houses. A couple of questions need to be asked before any of the material can be exploited:

- Was the production commissioned by the SABC? *If yes, what was the agreement between the SABC and relevant parties?*
- Is the production an adaptation of a literary work? *If so, who does the copyright and the copyright of the adaptation belong to?*
- Is the production a re-broadcast of foreign material? *If so, who owns the copyright?*
- Is the production based on another programme? *If so, who owns the format license?*

¹⁵ Sizwe Vilikazi, [Interview], 26 September 2012.

¹⁶ Denise Nicholson, [Interview], 26 September 2012.

Quite often ownership of copyright cannot be established, which leaves the collection with some orphan work status. In order to ensure that such works do not remain untouched, the EU is currently debating this issue, proposing that laws should be changed in order to make possible the legal exploitation of works where copyright cannot be established or copyright owners cannot be located or contacted. This debate might have a positive impact on South African copyright law and practices.

According to Denise Nicholson, “in terms of the SA copyright law, it is not lawful to reproduce material, unless the copyright term has expired (lifetime of the author plus 50 years to the end of the year in which the author died).” If it is deemed necessary, disclaimers should be added to these works. The disclaimers should state that “several attempts have been made to get permission without success, inviting anyone who knows the rights holders to come forward to negotiate licences or charges relating to the material.”¹⁷

The question therefore arises: Does protection of the individual’s rights outweigh the universal right to access? The SABC Radio Archives strongly believes that the material needs to be exploited, but that all risks must be considered when doing so. Extensive research needs to be done for each case to ensure that everything has been done to establish rights. However, time is of the essence. A balance needs to be found between time spent on finding the almost impossible and taking a leap for the benefit of the users.

4. The way forward

Various suggestions are currently under consideration regarding copyright and access. Firstly, after all resources have been exhausted, or relative surety exists regarding the ownership of copyright, an account should be opened to cater for claims should these arise and an agreement not reached. Secondly, partnership with other archives should be established in order to share information they might have regarding copyright issues, which includes the Springbok Radio collection. Such cooperation increases the chances of successfully unravelling the puzzle. Thirdly, it is simply courteous and best practice to always try to involve and get the blessing of license holders. Thus buy-in from stakeholders is critical. If they understand the importance of the collection and the exploitation thereof, the necessary resources might become available more easily, and Springbok Radio could be kept alive for a long time to come.

Accessibility to Springbok Radio content is not only with the intent of long-term exploitation, but primarily to satisfy the current desire for nostalgia. Achieving accessibility can be severely hindered by ownership or copyright issues, and requires the archivist to become a detective, continuously investigating, following up on leads, verifying evidence, and distilling facts from myth until the picture is complete. In this context, the SABC Radio Archive has accepted the challenge in terms of the current demands by listeners to gain access to OTR for ‘old time’s sake’ and to ensure that Springbok Radio will retain its value as a historical and cultural resource in the future.

In a world full of challenges, Old Time *anything* reminds us in general of good times in the past, and gives hope for the now. That is why the SABC Radio Archives will continue its efforts to overcome the challenges of exploitation in a bid to make Springbok Radio accessible to its listeners. In so doing, the SABC Radio Archives are contributing to the broad mandate of the SABC as the South African public broadcaster.

¹⁷ Nicholson, 2012.

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